RECEIVED

13 MAR - 1 PM 3: 08

OFFICE OF ADMINISTRATIVE COURTS

BEFORE THE SECURITIES COMMISSIONER

STATE OF COLORADO

Case No.

NOTICE OF DUTY TO ANSWER, NOTICE TO SET, NOTICE OF HEARING, AND NOTICE OF CHARGES

IN THE MATTER OF WEALTH MANAGEMENT RLJ CO d/b/a PLANNING STRATEGIES, INC. AND ROBERT LAMAR JONES

Respondent.

TO: Wealth Management RLJ CO d/b/a Planning Strategies, Inc. 5950 Daltry Lane Colorado Springs, CO 80906

> Robert Lamar Jones 5950 Daltry Lane Colorado Springs, CO 80906

NOTICE OF DUTY TO ANSWER

YOU ARE HEREBY NOTIFIED that, pursuant to § 24-4-105(2)(b), C.R.S., you are required to file a written answer to the following Notice of Charges set forth below with the Office of Administrative Courts, 633 Seventeenth Street, Suite 1300, Denver, Colorado 80202, within thirty (30) days after the mailing date of this Notice of Duty to Answer, Notice to Set, Notice of Hearing, and Notice of Charges. You must also mail a copy of such answer to the attorney of record for the Staff Colorado Division of Securities ("Staff"), Alexander C. Reinhardt, Assistant Solicitor General, Colorado Department of Law, Ralph L. Carr Colorado Judicial Center, 1300 Broadway, 8th Floor, Denver, Colorado 80203 within the same thirty-day time period.

If you fail to file your written answer within thirty days as set forth above, then an order entering a default decision may be issued against you. You are further advised that issuance of a default decision may grant the relief requested in the Notice of Charges, or such other relief or penalties that may be provided for by law, or both.

NOTICE TO SET

YOU ARE HEREBY NOTIFIED that the undersigned attorney or a representative of the Staff, will appear on March 26, 2013 at 9:15 a.m., in the Office of the Chief Administrative Law Judge, Office of Administrative Courts, 633 Seventeenth Street, Suite 1300, Denver, Colorado 80202, in order to set the date, time and location for a hearing regarding the Notice of Charges set forth below. You may be present in person or by counsel, or you may make prior arrangements to be reached by telephone at the time and date specified above by contacting the Office of Administrative Courts at (303) 866-2000 prior to the day of setting.

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that, pursuant to §§ 11-51-606(1), 24-4-104 and 24-4-105, C.R.S., a hearing will be held before an authorized administrative law judge at a date, time and location to be determined pursuant to the above Notice to Set. At the hearing, testimony will be taken and other evidence will be received by the administrative law judge for the purpose of determining whether any of the sanctions set forth in § 11-51-410(1), C.R.S. should be imposed upon you, including but not limited to the revocation of Planning Strategy, Inc's investment adviser license, and/or the revocation of Robert Lamar Jones's investment adviser representative license for violations of §§ 11-51-410(1)(b), (g), and (l), C.R.S.; 11-51-407(5), C.R.S.; and 3 CCR 704-1, Rules 51-4.6(IA)(A)(7)(b), (10), and (18), 51-4.7(F), 51-4.8(IA), and 51-4.10(IA) (B)(2)(b)(ii).

YOU ARE FURTHER NOTIFIED that at the hearing in this matter you shall have the right to appear in person and/or by legal counsel, to present evidence on your own behalf, to cross-examine any witnesses, and to rebut any evidence presented. You may also have subpoenas issued on your behalf upon request to the administrative law judge. A copy of the General Rules of Procedure may be obtained at the Division of Administrative Hearings or by visiting their Internet web site at:

http://www.colorado.gov/dpa/oac/gs_procedural_rules.htm.

RELEVANT LEGAL AUTHORITY

The following statutes and rules are relevant to the allegations and charges made in the Notice of Charges:

§ 11-51-410. Denial, suspension, or revocation.

- (1) The securities commissioner may by order deny an application for a license, suspend or revoke a license, censure a licensed person, limit or impose conditions on the securities activities that a licensed person may conduct in this state, and bar a person from association with any licensed broker-dealer, investment adviser, or federal covered adviser in the conduct of its business in this state in such capacities, and for such period as the order specifies. These sanctions may be imposed only if the securities commissioner makes a finding, in addition to the findings required by section 11-51-704(2), that the applicant or licensed person or, in the case of a broker-dealer or investment adviser, a partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker dealer or investment adviser:
- (b) Has willfully violated or willfully failed to comply with any provision of this article, or any rule or order under this article ...
- (g) Has willfully engaged in a course of conduct involving the violation of one or more rules made by the securities commissioner that prohibit unfair and dishonest dealings by a broker-dealer or sales representative ... that licensed broker-dealers and sales representatives who will be required to comply with the rule generally agree that the conduct prohibited by the rule does not meet prevailing standards of fair and honest dealing with the securities industry and that it is reasonable to expect the rule will prevent or deter such conduct.
- (l) In the case of an investment adviser or investment adviser representative, willfully has:
- (II) Engaged in conduct contrary to one or more rules wherein the securities commissioner prohibits dishonest or unethical conduct in connection with providing investment advisory services. ...

3 CCR 704-1, Rule 4.7-F Unfair and Dishonest Dealings

The following practices shall be deemed to be "unfair and dishonest dealings" for the purposes of section 11-51-410(1)(g), C.R.S.:

F. Failure by a sales representative, in connection with a customer's purchase or sale of a security which is not recorded on the books and records of the broker-dealer by which the sales representative is employed or otherwise engaged, to obtain the broker-

dealer's prior written approval of the sales representative's participation in the purchase or sale of the security.

3 CCR704-1, Rule 4.8(IA) Dishonest and Unethical Conduct

A person who is an investment adviser or an investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, an investment adviser or investment adviser representative shall not engage in dishonest or unethical conduct including the following:

- K. Failing to disclose to clients, in writing, before any advice is rendered, any material conflict of interest relating to the adviser or of any of its employees which could be reasonably be expected to impair the rendering of unbiased and objective advice, including
 - 1. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

3 CCR 704-1, Rule 51-4.6(IA) Books and Records Requirements for Licensed Investment Advisers

A. Except as otherwise provided in section I for out-of-state investment advisers, every investment adviser licensed or required to be licensed under the Act shall make and keep true, accurate and current the following books, ledgers and records:

7. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

(a) any recommendation made or proposed to be made and any advice given or proposed to be given;

(b) any receipt, disbursement or delivery of funds or securities; or

(c) the placing or execution of any order to purchase or sell any security,

provided, however, that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and if the investment

adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement, a memorandum describing the list and its source;

- 10. A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser;
- 18. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

§ 11-51-407. Operating requirements.

- (5) No investment adviser with its principal office and place of business in this state or investment adviser representative of a licensed investment adviser with a place of business in this state shall take or maintain custody or possession of any funds or securities in which any client of such person has any beneficial interest unless:
 - (a) All of the securities of each client are segregated, marked to identify the particular client with any beneficial interest therein, and held in safekeeping in some place reasonably free from risk of loss, damage, or destruction; and
 - (b) (I) All of the funds of each client are deposited in one or more accounts, containing only clients' funds, at a depository institution; and
 - (II) Each account is maintained in the name of the investment adviser or a federal covered adviser as agent or trustee for such clients; and
 - (III) A separate record is maintained for each such account that shows the name and address of the depository institution where the account is maintained, the dates and amounts of deposits to and withdrawals from the account, and the exact amount of each client's beneficial interest in the account; and

- (c) Written notification is sent to the client giving the place and manner in which the client's funds or securities will be maintained immediately after the investment adviser or investment adviser representative accepts custody or possession of such funds or securities from the client and thereafter, if and when there is any change in the place or manner, written notification is sent to the client explaining the change; and
- (d) An itemized statement is sent to each client, at least once every three months, that shows the client's funds and securities in the custody or possession of the investment adviser or investment adviser representative at the end of the period and all debits, credits, and transactions affecting the funds and securities during the period; and
- (e) A certified public accountant or, with the prior written consent of the client, a public accountant verifies all funds and securities of clients at least once during each calendar year through an actual examination. Such examination shall be at a time chosen by the accountant without prior notice to the investment adviser or investment adviser representative. The investment adviser shall file with the securities commissioner promptly after each such examination a certificate from the accountant in which such accountant avers to the commissioner that the accountant has performed an examination of the funds and securities accounts, and in which the accountant describes the nature and extent of the examination, and the results and conclusions reached.
- (f) The investment adviser or investment adviser representative who has custody of client funds or securities posts bonds in amounts and with conditions the securities commissioner may by rule prescribe, subject to the limitations of section 222 (c) of the federal "Investment Advisers Act of 1940". Any equivalent deposit of cash or securities shall be accepted in lieu of any bonds so required. Every bond shall provide for suit thereon by any person who has a cause of action under section 11-51-604 (3) and (5).

3 CCR 704-1, Rule 51-4.10 (IA)(B)(2)(b)(ii) Custody and Safekeeping Requirements

- B. No investment adviser or investment adviser representative, licensed or required to be licensed in this state shall take or maintain custody or possession of any funds or securities in which any client of such person has any beneficial interest unless:
 - 2. If the investment adviser or investment adviser representative has custody as defined in Rule 51-4.10(IA).A.1 due solely by having fees directly

deducted from the client accounts and complies and provides the following safeguard requirements:

- (b) Notice of fee deduction. Each time a fee is directly deducted from a client account, the investment adviser must concurrently:
 - ii. Send the client an invoice specifying and itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee;

NOTICE OF CHARGES

YOU ARE HEREBY NOTIFIED of the following allegations:

PARTIES AND JURISDICTION

- 1. Wealth Management RLJ CO d/b/a Planning Strategies, Inc. ("PSI") is a Colorado Company with a business address of 5950 Daltry Lane, Colorado Springs, CO 80906. At all times relevant to this Notice of Charges, PSI was a licensed investment adviser.
- 2. Robert Lamar Jones ("Jones") is an adult male individual and is the registered agent and control person for PSI. and maintains the same business address at 5050 Daltry Lane, Colorado Springs, CO 80906. At all times relevant to this Notice of Charges, Jones was a licensed investment adviser representative.
- 3. Pursuant to §§11-51-410(1) and 703(1), C.R.S., the Securities Commissioner has jurisdiction over the Respondents and the subject matter of this proceeding.

RELATED PARTIES

4. Western International Securities, Inc. ("Western") is a corporation with its principal place of business and mailing address at 70 South Lake Avenue, #700, Pasadena, CA 91101. At all times relevant hereto, Western has been a broker-dealer licensed in Colorado. At all times relevant to this Notice of Charges, in addition to acting as an investment adviser representative, Jones was licensed as a securities sales representative through Western.

5. Impact Global Resources LLC ("IGR") is a Delaware corporation with its current business address at 7345 E. Acoma Drive, #202, Scottsdale, AZ 85260. At all times relevant to this Notice of Charges, IGR's principal place of business and mailing address was at 888 Garden of the Gods Rd., Suite 103, Colorado Springs, Colorado, 80907. IGR is the managing venture for the Wolfe Creek # 1 Joint Venture, which listed the same Colorado business address as IGR's at all times relevant to this Notice of Charges.

STATEMENT OF FACTS

- 6. This is an action to revoke Jones's investment adviser representative license and PSI's investment adviser license. This action arises from an examination performed by the Colorado Division of Securities pursuant to § 11-51-409, C.R.S. that began in October, 2010.
- 7. As a licensed investment adviser and investment adviser representative who receive special compensation for managing the investment accounts of others, PSI and Jones are obligated by rule to maintain billing records and certain records related to their clients, and to notify their clients regarding the fees they are deducting from their clients' investment accounts. Jones and PSI, by virtue of their licenses, are required to be aware of these rules, and were in violation of them at the beginning of the examination and continued to violate them subsequently.

Billing violations

- 8. Starting in at least 2009 and continuing until the present, Jones and PSI have managed investment accounts at TD Ameritrade for approximately 100 of their investment advisory clients. Jones and PSI instructed TD Ameritrade to deduct asset management fees from their clients' accounts on a quarterly basis.
- 9. From at least 2009 through the end of 2010, Jones and PSI did not send any notice or written communication to their investment advisory clients regarding the fees that were deducted from their clients' accounts. Jones and PSI kept the fees that were deducted from their clients' investment accounts, and were therefore aware of those deductions.
- 10. Additionally, to the extent Jones and PSI may have sent notices after 2010, they did not keep records of client billing until 2012.

Record keeping violations

- 11. Jones and PSI also failed to keep adequate client files. From 2009 through at least 2011, Jones and PSI did not maintain copies of the written agreements between PSI and its clients. Jones and PSI were advised of this deficiency in 2011.
- 12. From 2009 until late in 2012, Jones and PSI also failed to maintain information regarding each of their clients that is the basis for making any recommendation or providing any investment advice. Jones and PSI were advised of this deficiency in 2011.

"Selling away" risky oil and gas investments to investment advisory clients without performing due diligence

- 13. Jones was also licensed as a sales representative from 1992 to 2011, and worked in that capacity for a licensed broker dealer, Western, from January 2004 to June 14, 2011. It is considered unfair and dishonest dealing for a sales representative to sell securities to customers that are not recorded on the books and records of the broker-dealer that employs him without first obtaining written approval from the broker dealer.
- 14. Jones and PSI also have a fiduciary duty to disclose, in writing, any material conflict of interest to their clients, including the receipt of commissions from a securities issuer for the sale of those securities to their clients. Jones's and PSI's fiduciary duties also include performing adequate due diligence for any investment they recommend to their clients.
- 15. In May of 2010, Jones placed approximately \$47,000 from nine of his investment advisory clients in joint venture interests in the Wolfe Creek # 1 Joint Venture, which had a stated purpose of operating an oil and gas well. Jones received 6% commission on the investment from the managing venturer of the joint venture, IGR. Each of his nine clients purchased a fraction of one unit. Jones did not disclose to his clients, in writing or otherwise, the commission he received from IGR.
- 16. In connection with the Wolfe Creek # 1 Joint Venture offering, IGR issued a Confidential Information Memorandum ("CIM") that set forth the terms of the offering, the risks, and statements that IGR believes joint venture interests are not securities. IGR also issued a Joint Venture Agreement ("JVA") and Questionnaire to be executed by each joint venturer. According to the CIM, JVA, and Questionnaire:
 - a. The venture will enter into a turnkey drilling contract with the managing venture to drill and test the prospect well.
 - b. The day-to-day operations are delegated to the managing venture.
 - c. The investors have the power to vote on certain post-investment decisions related to the management of the venture, such as whether to complete the well, engage in hydrolic fracturing ("frack" or "fracking"), or plug and

- abandon the well. The weight of an investor's vote correlated with the size of the unit, or fraction of a unit, they purchased.
- d. Investors lack the right or ability to vote on the admission or exclusion of new investors.
- e. Investors cannot bind the Joint Venture.
- f. The Questionnaire does not inquire into or assess investors' specific knowledge or sophistication concerning the Joint Venture activity or oil and gas development.
- g. The managing venturer has negotiated the lease and determined where to drill, the price of the turnkey drilling contract, and the price of the "units" in the joint venture, and engaged in other significant pre-investment activities which set the course for the investment.
- 17. Jones's nine clients did not have a pre-existing relationship with IGR, nor did they have any significant experience in the oil and gas industry. They invested money through Jones expecting profit from IGR's entrepreneurial and managerial efforts. The interests the Wolfe Creek # 1 Joint Venture are "investment contracts" and are therefore securities under the Colorado Securities Act.
- 18. During this time, Jones was employed at Western as a licensed securities sales representative. Jones did not notify Western that he was "selling away," meaning he did not notify Western that he was participating in making the IGR offering to his clients and receiving commissions from IGR for his sales. As a result, he did not gain written approval from Western for these sales.
- 19. Jones also failed to disclose to the clients who invested in the Wolfe Creek # 1 Joint Venture that he received a commission for their purchase of partial units.
- 20. Prior to recommending this investment to his clients, Jones read the CIM and sales brochure for the investment, and otherwise relied on issuer's representations that the well would be commercially productive. He performed no other independent due diligence, and failed to disclose to his clients that he performed minimal due diligence with respect to this investment opportunity.

FIRST CLAIM

Failure to keep adequate billing records and to notify clients of investment advisory fees (All Respondents)

(§§ 11-51-410(b), 11-51-407(5), and Rules 51-4.10(B)(2)(b)(ii) and 51-4.6(IA)(A)(7)(b))

21. Paragraphs 1-20 are incorporated by reference.

- 22. By engaging in the conduct described above, PSI and Jones acted as an "investment adviser," and an "investment adviser representative," respectively, as defined in §§ 11-51-201(9.5)(a)(I) and (9.6)(a), C.R.S.
- 23. By engaging in the conduct described above, Respondents Jones and PSI, who are respectively a licensed investment adviser and a licensed investment adviser representative, engaged in investment advisory services under § 11-51-201(9.7), C.R.S.
- 24. By engaging in the conduct described above, Respondents Jones and PSI willfully failed to keep adequate billing records and willfully failed to notify their investment advisory clients of the fees that were deducted from their clients investment accounts at TD Ameritrade by sending them invoices specifying and itemizing the fees. Such conduct violated rule 51-4.10(IA)(B)(2)(b)(ii) with respect to both Respondents. Additionally, such conduct violated § 11-51-407(5)(d); and Rule 51-4.6(IA)(7)(b) with respect to Respondent PSI.
- 25. The conduct of Respondents constitutes a violation of § 11-51-410(1)(b), C.R.S. under the Colorado Securities Act, and constitutes grounds for the imposition of sanctions against Respondents pursuant to § 11-51-410(1), C.R.S., including suspension or revocation of their investment adviser and investment adviser representative licenses pursuant to § 11-51-410, C.R.S. In addition, pursuant to § 11-51-704(2), C.R.S., these sanctions are necessary and appropriate in the public interest and consistent with the purposes and provisions of the Act.

SECOND CLAIM

Failure to keep adequate client records (Respondent PSI) (§§ 11-51-410(b), Rules 51-4.6(IA)(A)(10) and 51-4.6(IA)(A)(18))

- 26. Paragraphs 1-25 are incorporated herein by reference.
- 27. By engaging in the conduct described above, Respondent PSI, a licensed investment adviser, willfully failed to keep true, accurate and current copies of each agreement PSI entered into with each of its clients, in violation of Rule 51-4.6(IA)(A)(10).
- 28. Respondent PSI also failed to maintain "written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client" as required by 51-4.6(IA)(A)(18).
- 29. Respondent PSI's conduct constitutes a violation of § 11-51-410(1)(b), C.R.S. under the Colorado Securities Act, and constitutes grounds for the imposition of sanctions

against Respondents pursuant to § 11-51-410(1), C.R.S., including suspension or revocation of its investment adviser pursuant to § 11-51-410, C.R.S. In addition, pursuant to § 11-51-704(2), C.R.S., these sanctions are necessary and appropriate in the public interest and consistent with the purposes and provisions of the Act.

THIRD CLAIM

Unfair and Dishonest Dealings
Selling Away
(Respondent Jones)
(§ 11-51-410(b) and (g), Rule 51-4.7)

- 30. Paragraphs 1 through 29 are incorporated herein by reference.
- 31. The joint venture interests in the Wolfe Creek # 1 Joint Venture are "securities" under § 11-51-201(17), C.R.S. in that they are at least "investment contracts."
- 32. At all times relevant herein, Respondent Jones was licensed as a sales representative for Western, a licensed broker-dealer.
- 33. Jones, in connection with a customer's purchase or sale of a security which was not recorded on the books and records of the broker-dealer by which the sales representative is employed or otherwise engaged, willfully failed to obtain the broker-dealer's prior written approval of his participation in the purchase or sale of securities in violation of Rule 51-4.7.F.
- 34. Such conduct constitutes a violation of § 11-51-410(1)(b) and (g), C.R.S. under the Colorado Securities Act, and constitutes grounds for the imposition of sanctions against Respondent Jones pursuant to § 11-51-410(1), C.R.S., including suspension or revocation of his investment adviser representative license pursuant to § 11-51-410, C.R.S. In addition, pursuant to § 11-51-704(2), C.R.S., these sanctions are necessary and appropriate in the public interest and consistent with the purposes and provisions of the Act.

FOURTH CLAIM

Dishonest and Unethical Conduct Breach of Fiduciary Duty (§ 11-51-410(g) and (l), Rule 51-4.8(IA))

- 35. Paragraphs 1 through 34 and incorporated herein by reference.
- 36. By engaging in the conduct described above, Jones and PSI willfully failed to disclose to their clients, in writing, before any advice was rendered, a material conflict of interest relating to them which could be reasonably be expected to impair the rendering of

unbiased and objective advice, including the six-percent commission they received from IGR.

- 37. Additionally, Jones and PSI did not act with the due care expected of prudent financial advisers in like situations by willfully failing to perform the proper due diligence before recommending the Wolfe Creek #1 Joint Venture to nine of their investment advisory clients in violation of Rule 51-4.8(IA).
- 38. The conduct of Respondents constitutes a violation of §§ 11-51-410(1)(g) and (l), C.R.S. under the Colorado Securities Act, and constitutes grounds for the imposition of sanctions against Respondents pursuant to § 11-51-410(1), C.R.S., including suspension or revocation of their investment adviser and investment adviser representative licenses pursuant to § 11-51-410, C.R.S. In addition, pursuant to § 11-51-704(2), C.R.S., these sanctions are necessary and appropriate in the public interest and consistent with the purposes and provisions of the Act.

WHEREFORE, the Staff respectfully requests that an Administrative Law Judge enter an initial decision revoking, suspending or otherwise imposing conditions upon the investment adviser or investment adviser representative licenses of Jones and PSI pursuant to § 11-51-410, C.R.S., and for such other relief as the Administrative Law Judge deems just and proper.

DATED: March 1, 2013.

STAFF OF THE DIVISION OF SECURITIES

STATE OF COLORADO

GÉRALD ROME

Deputy Securities Commissioner 1560 Broadway, Suite 900

Denver, Colorado 80202

Tel: (303) 894-2320 Fax: (303) 861-2126

JOHN W. SUTHERS ATTORNEY GENERAL

ALEXANDER C. REINHARDT, 34970*

Assistant Solicitor General Business and Licensing Section Attorneys for the Staff of the

Division of Securities

Colorado Department of Law, Ralph L. Carr Colorado Judicial Center, 1300 Broadway,

8th Floor, Denver, Colorado 80203

Tel: (720) 508-6401 Fax: (720) 508-6037 *counsel of record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within Notice of Duty to Answer, Notice to Set, Notice of Hearing, and Notice of Charges upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this <u>1st</u> day of <u>March</u> 2013 addressed as follows:

Wealth Management RLJ CO d/b/a Planning Strategies, Inc. 5950 Daltry Lane Colorado Springs, CO 80906

Robert Lamar Jones 5950 Daltry Lane Colorado Springs, CO 80906

Werree!